reliant groups which shall represent the various elements in production and shall compete with one another; and the state is to "step in" to see that they do not combine to exploit the consumer or carry their disputes to a costly extent. Perhaps it is idle to quarrel with supposed results in the theoretical end of doctrine; but as Mr. Lauchheimer drew his picture I was not impressed with force of the state's "stepping in." The state seemed to be in already, and between these burly groups to give very much the impression, mental attitude and all, of the Doormouse between the Mad Hatter and the March Hare. It must be a more active partner and play a more intelligent part, or it, too, will be dipped in the tea.

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THE RELATION OF THE EXECUTIVE POWER TO LEGISLATION. By Henry Campbell Black. Princeton: Princeton University Press. 1919. pp. vii, 191.

After a cursory review of the formal law and actual practice of the governments of the world in respect to the relation of the executive power to legislation, Mr. Black proposes that the President of the United States present his recommendations to Congress by means of completely drafted bills which shall be received and considered in each house by a "Committee on Presidential Bills," with power to move a reference of any bill to "one of the standing committees to which it appropriately belongs," and to act as "guardian of the bill (save for its discussion in the standing committee) until its final passage or defeat." The adoption of this proposal, he says, "would put us back upon a basis of honesty," and "enable us to play the game openly and aboveboard, with candor and self-respect, without disguise or circumlocution, like men who love the splendor of noon and shun the miasmatic mists of twilight."

The author's recital of prevailing law and custom will be welcomed by those who lack access to the secondary works on which it is largely based. It is an undoubted convenience to have familiar knowledge on a special subject winnowed from more comprehensive works on government and set forth in a separate volume. Mr. Black's appreciation of the researches and judgments of his forerunners is acknowledged by frequent and often extended quotations from the works of Bryce, Lowell, Beard, Ford, Freund, Holcombe, Taft, Wilson, and others. The descriptive portions of the volume are unusually free from any intrusions of personal bias. Even in expounding his constructive proposal of legislative committees on presidential bills, Mr. Black does not charge our recent presidents with usurpation. He does, it is true, imply that in their participation in law-making they have not been "content to play the part for which the Constitution has cast them" and that they might have shown "more self-restraint and greater respect for the fundamental principles of constitutional government." But, on the other hand, he points out that his proposal requires no constitutional change, since "it will not be a question of bringing within the Constitution something which it does not now permit," but "merely acknowledging the existence of something which it does not forbid."

Mr. Black's formalism revolts at what he calls our "secret and subterranean and underhand and unacknowledged methods" — methods which, as he points out earlier, "are familiar to every one who reads the newspapers." He yearns to legitimatize custom by adoption in enacted law. He plainly feels that Topsy's genetic process should not be imitated by institutions of government. Unfortunately for him, history is against him. Topsy's biological contribution would have been more accurate had it been applied to government rather than to herself. We should be kept quite busy if we insisted on making our formal law keep pace with our practice. First and foremost we should pass

amendments to the national and state constitutions authorizing the judiciary to pass on the constitutionality of acts of co-ordinate legislatures. It might be necessary to resubmit the Fourteenth Amendment to state legislatures whose legitimacy was not open to question. Attention should then be given to "senatorial courtesy," to presidential nominations and national party platforms, to tennis and kitchen cabinets and unofficial diplomatic agents, to presidential interference in industrial disputes, and to a number of other phenomena not mentioned in the Constitution and not foreseen by The Fathers. As soon as we were up to date, something might change and then we should have to begin again.

Mr. Black's philosophy is not rare. It finds its counterpart in a familiar and widely held attitude toward the common law. Nevertheless changes continue to make their way between the cracks which authenticated records leave open. On the whole it seems more useful to perceive the process and to guide or control it than to kick rhetorically against the pricks.

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ON JURISPRUDENCE AND THE CONFLICT OF LAWS. By Frederic Harrison. With annotations by A. H. F. Lefroy. Oxford: Clarendon Press. 1919. pp. 179.

This is a reprint, without material change, of two lectures given by Frederic Harrison in 1878 as Professor to the Inns of Court: followed by annotations of Professor Lefroy, consisting chiefly of extracts from English authors since 1879, and a translation from Bluntschli. The lectures are simple; one must remember that they are forty years old, and that legal education in England was then at its lowest ebb. The last two, especially, are elementary and sketchy; they consist of remarks concerning the nature and history of the Conflict of Laws. Professor Lefroy apparently knows too much of that subject to think them worth annotating.

The two lectures on Austin's theory of Sovereignty and of Law are on the other hand acute and valuable. His ingenious explanation of Austin's theory — that it is false, of course, in general, but true to a lawyer's limited experience — should shock a follower of that apostle of exactly defined truth. "If the sovereign be really sovereign, it will be able to compel its own law courts to enforce its own laws. Therefore, *to the lawyer, and for purposes of law*, the sovereign is unlimited." Of Austin's definition of law he says: "This is only one way of looking at law. It purposely drops out of view other very important sides of law. And, it is obvious, there are some cases in which it is so exceedingly one-sided, and requires so much qualification and explanation, that it would be actively misleading if taken by itself. In fact, neither Austin's account of law, nor that of sovereignty, is to be taken as a *definition* strictly." Yet, it will be remembered, these "accounts" were carefully elaborated by Austin to delimit the use of terms he believed usually misapplied.

It is the lecture on The Historical Method in which the distinguished Positivist is most happy. His creed is thus stated: "For the lawyer the great interest always must be what is the law as it is. How it has become what it is, is a very useful inquiry. But this will become positively confusing if the subordinate inquiry is ever allowed to stand on equal terms with the main inquiry — the law as it is, as it is at any given time." So wrote the God of Law as it Is in 1879; and he added that "we have special disadvantages in using the historical method, in law, inasmuch as we have not got a symmetrical jurisprudence of any kind to control and direct it." And he foresaw impending the Romanization and codification of our law. In the forty years that have elapsed this historical method, in the hands of Thayer, of Maitland, and of Ames, has saved our law